

RECEIVED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

SEP - 5 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Replacement of Part 90 by Part 88 to Revise)
the Private Land Mobile Radio Services and)
Modify the Policies Governing Them)

PR Docket No. 92-235

Examination of Exclusivity and Frequency)
Assignments Policies of the Private)
Land Mobile Services)

**MOTION OF AAA
FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS**

The American Automobile Association ("AAA"), by its attorneys and pursuant to 47 C.F.R. § 1.429(d), hereby requests leave to file supplemental comments in support of its Petition for Reconsideration in the above-referenced docket. 1/

These comments are necessitated by recent congressional action which affects the issues raised by AAA in its Petition for Reconsideration. Specifically, on August 5, 1997, the President signed the Balanced Budget Act of 1997 (the "Budget Act"). 2/ Among other things, the Budget Act prohibits the FCC from using

1/ A copy of the Supplemental Comments is attached. Copies of this Motion and the attached Supplemental Comments are being served on all parties that filed petitions for reconsideration of the *Second Report and Order*, or oppositions to any such petitions.

2/ P.L. 105-33 (August 5, 1997).

competitive bidding to award licenses used by "public safety radio services" including "emergency road services provided by not-for-profit organizations." 3/

This congressional determination that emergency road services are "public safety radio services" bears directly on the issues under review in this proceeding. The *Second Report and Order* classified certain frequencies as "public safety" or "quasi-public safety" and accorded greater interference protection to those frequencies. AAA's Petition for Reconsideration challenged the Commission's determination that frequencies in the Auto Emergency Radio Service were neither public safety nor quasi-public safety frequencies. Congress now has spoken directly on this classification, and therefore AAA respectfully requests permission to file these supplemental comments.

Respectfully submitted,

AMERICAN AUTOMOBILE ASSOCIATION

By: 

Marissa G. Repp
Steven F. Morris

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

September 5, 1997

3/ Budget Act, § 3002(a)(2)(A).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Replacement of Part 90 by Part 88 to Revise)	PR Docket No. 92-235
the Private Land Mobile Radio Services and)	
Modify the Policies Governing Them)	
)	
Examination of Exclusivity and Frequency)	
Assignments Policies of the Private)	
Land Mobile Services)	

SUPPLEMENTAL COMMENTS OF AAA

The American Automobile Association ("AAA"), by its attorneys,
hereby files these supplemental comments in support of its Petition for
Reconsideration in the above-referenced docket. 1/

In its *Second Report and Order* in this proceeding, the Commission
consolidated twenty services within the Private Land Mobile Radio Services into
two broad pools: a Public Safety Pool and an Industrial/Business Pool. 2/ The
Commission placed the Auto Emergency frequencies -- which are used by AAA to
respond to over 80,000 emergency road calls a day -- in the Industrial Pool, rather

1/ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Petition for Reconsideration of the American Automobile Association (filed May 19, 1997) ("AAA Petition for Reconsideration").

2/ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Second Report and Order, PR Docket No. 92-235, FCC 97-61 (rel. March 12, 1997) ("*Second Report and Order*").

than in the Public Safety Pool. 3/ With the exception of frequencies in three “quasi-public safety” services (Power, Petroleum and Railroads), any coordinator within the Industrial Pool will have the ability to coordinate any frequency within the pool, including frequencies formerly reserved for Auto Emergency use. 4/

In its Petition for Reconsideration, AAA demonstrated that the Commission’s decision failed to adequately consider the substantial public safety aspect of the service provided by AAA. 5/ By permitting multiple entities to coordinate the Auto Emergency frequencies, the *Second Report and Order* will place an increased burden on those frequencies, and on AAA’s ability to respond to emergency situations. This result directly conflicts with the Commission’s objectives in this proceeding. Accordingly, AAA recommended that the Commission reconsider its decision and either (1) place the Auto Emergency frequencies in the Public Safety Pool, or (2) give AAA the same coordination rights within the Industrial Pool as other quasi-public safety services. 6/

On August 5, 1997, the President signed the Balanced Budget Act of 1997 (the “Budget Act”). 7/ Among other things, the Budget Act generally expands the Commission’s authority to assign licenses through competitive bidding when

3/ *Id.* at ¶ 23.

4/ *Id.* at ¶ 41-42.

5/ AAA Petition for Reconsideration at 6-9.

6/ *Id.* at 12, 15.

7/ P.L. 105-33 (August 5, 1997).

there are mutually exclusive applications. In expanding the Commission's auction authority, however, Congress specifically exempted licenses issued "for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations." ^{8/} Congress explained in the Conference Report that "[t]his service exemption also includes radio services used by not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA). The Senate included this particular exemption in recognition of the valuable public safety service provided by emergency road services." ^{9/}

Congress' determination that auto emergency radio services such as those provided by AAA perform a "valuable public safety service" is based on AAA's history of responding to emergency situations. As AAA explained in its Petition, AAA responds to over 29 million calls a year. Approximately 30 percent of those calls, or more than 8 million calls a year, involve situations in which there is some threat to personal or public safety. ^{10/}

^{8/} Budget Act, § 3002(a)(2)(A). Notably, Congress specifically identified auto emergency services, but did not identify the three quasi-public safety services identified by the Commission in the *Second Report and Order*.

^{9/} H.R. Report 105-217 at 572.

^{10/} This estimate is based on a review of AAA's internal records. The percentage may actually be higher as AAA's current data collection system underreports certain categories of safety assistance.

Congress' recognition of the public safety function performed by AAA supports AAA's recommendation that the auto emergency frequencies be provided with additional protection against interference. As AAA explained in its Petition, placing the Auto Emergency frequencies in the Industrial Pool without at least granting AAA the same coordination rights as other quasi-public safety entities will jeopardize AAA's ability to provide the level of service that its 39 million members, and local safety agencies, have come to rely on. This is inconsistent with the Commission's goal of protecting frequencies used for safety purposes from interference, and with the congressional determination that emergency road services constitute public safety services.

Accordingly, for the reasons stated herein and in AAA's prior filings in this docket, the Commission should provide greater protection to the Auto Emergency frequencies by placing those frequencies in the Public Safety Pool or by

giving AAA the same coordination rights within the Industrial Pool as other quasi-public safety services.

Respectfully submitted,

AMERICAN AUTOMOBILE ASSOCIATION

By: 

Marissa G. Repp
Steven F. Morris

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

September 5, 1997

CERTIFICATE OF SERVICE

I, Melissa S. Gross, do hereby certify that copies of the foregoing Motion of AAA for Leave to File Supplemental Comments were mailed, postage prepaid by first class mail, to each of the following this 5th day of September 1997:

Wayne V. Black
John Reardon
Paula Deza
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Dennis C. Brown
Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006

Mark E. Crosby
President and CEO
Industrial Telecommunications
Association, Inc.
1110 N. Glebe Road
Suite 500
Arlington, VA 22201

Mark J. Golden
Vice President, Regulatory
Personal Communications Industry
Association
500 Montgomery Street, #700
Alexandria, VA 22314

Christopher D. Imlay
Booth, Freret, Imlay & Tepper, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

William K. Keane
Arter & Hadden
1801 K Street, N.W.
Suite 400K
Washington, D.C. 20006-1301

Lars-Goran Larsson
Ericsson, Inc.
1634 Eye Street, N.W.
Washington, D.C. 20006-4083

George Petrutsas
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209-3801

John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Alan R. Shark
President
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Jackie Chorney /*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Rudy Baca /*
Federal Communications Commission
1919 M. Street, N.W., Room 802
Washington, D.C. 20554

Suzanne Toller /*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

David Siddall /*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Dan Phythyon /*
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David E. Horowitz /*
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, D.C. 20554

Ira R. Keltz /*
Federal Communications Commission
2025 M Street, N.W., Room 8119
Washington, D.C. 20554

Robert Pepper /*
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Jeffrey L. Sheldon
General Counsel
UTC
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

Alan S. Tilles
David E. Weisman
Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

* delivered by hand


Melissa S. Gross